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March 3, 2003

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 02-45 Global NAPs, Inc. Arbitration

Dear Ms. Cottrell:

I am responding to Global NAPs' letter of February 27, 2003, in which it attempts to justify its admitted failure to comply with a clear and express Department directive to sign the Final Arbitration Agreement that the Department approved in its order of February 19, 2002. GNAPs' letter only further establishes its intention to continue defying a Department order. As Verizon Massachusetts has already explained, the Department should take immediate action to enforce its orders.

GNAPs' letter is premised on nothing more than its belief that the Department's ruling concerning the application of access charges on ISP-bound traffic delivered via virtual NXX traffic violates FCC rules. Apparently, GNAP believes that when it disagrees with final Department rulings it may simply ignore them while it continues to debate the matters. However, the Department decided that very issue in this case and held that GNAPs was wrong. The Department found that the FCC's *ISP Remand Order*[1] did not change or preempt its authority because the FCC "explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action" and "continues to recognize that calls that travel to points beyond the local exchange are access calls." The Department explained:

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[1] *In the Matter of Local Competition Provision in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand, 16 FCC Rcd 9151 (rel. April 27, 2001) ("*ISP Remand Order*"), *remanded, WorldCom, Inc. v. Federal Communications Comm'n*, 288 F.3d 429 (D.C. Cir. 2002).

> Although GNAPs argued in its Brief that the ISP Remand Order "changed everything" regarding intercarrier compensation and the distinctions between local and toll, GNAPs did not advance, nor could the Department find, any basis on which the Department's prior conclusions regarding local calling areas was changed by the ISP Remand Order or any other FCC decision. The ISP Remand Order explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action. ISP Remand Order at ¶ 39. Furthermore, the ISP Remand Order continues to recognize that calls that travel to points beyond the local exchange are access calls. Id. at ¶ 37. In addition, the FCC, when striking the term "local traffic" from its rules, recognized that there is a difference between a call being geographically local and merely rated as local. The FCC explicitly recognized that the term "local" is not statutorily defined and that its use created considerable ambiguity as to whether what is being referred to is a locally rated call or a jurisdictionally local call. Id. at ¶¶ 45, 46. As such, the ISP Remand Order has no impact on the calling area structure implemented by the Department in D.P.U. 89-300.
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> While low-priced LATA-wide calling may be an attractive option to many consumers, it appears that GNAPs' ability to offer this service on an economical basis is contingent upon the alteration of the access regime, which is not an appropriate subject for investigation in a two-party arbitration.[2]

On the basis of the record before it, the Department thus ruled that GNAPs must follow Verizon MA's local calling areas and that GNAPs' virtual NXX arrangement was a toll-substitute for which GNAPs should pay Verizon MA intrastate access charges. The Department also noted:

> … GNAPs' VNXX would artificially shield GNAPs from the true cost of offering the service and will give GNAPs an economic incentive to deploy as few new facilities as possible. By artificially reducing the cost of offering the service, GNAPs will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling. The VNXX customers will be able to offer an artificially low price to their calling party subscribers, thus sending inaccurate cost signals to the calling parties concerning the true cost of the service. The result would be a considerable market distortion based on an implicit Verizon subsidy of GNAPs' operations.[3]

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[2] Final Order, D.T.E. 02-45 at 24-25.

[3] Final Order, D.T.E. 02-45 at 36-37.

The fact is that the Department fully and fairly addressed the issue in this arbitration and rejected GNAP s position. While GNAPs obviously disagrees with the Department, its subjective view of the merits of its position clearly provides no excuse for its continued failure to comply with Department orders. Thus, its offer to discuss this matter further with both Verizon MA and the Department is empty. There is nothing to discuss; the Department has decided the matter, and all that is left for GNAPs to do now before the Department is to comply with its orders.

Sincerely,

/s/Keefe B. Clemons

Keefe B. Clemons

Enclosure

cc: Tina W. Chin, Arbitrator
Michael Isenberg, Director, Telecommunications Division
Peter Allen, Telecommunications Analyst
James R. J. Scheltema, Director - Regulatory Affairs – Global NAPs
William J. Rooney, Jr., Vice President and General Counsel – Global NAPs
Christopher W. Savage, Counsel for Global NAPs, Inc.